

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RODNEY NICKS

Claimant

VS.

LAKEPOINT NURSING CENTER

Respondent

AND

FIRE & CASUALTY INS. CO. OF CONN.

Insurance Carrier

Docket No. **255,731**

ORDER

Claimant requests review of a preliminary Order entered by Administrative Law Judge John D. Clark on July 31, 2001.

ISSUES

The claimant alleges he injured his neck in a slip and fall accident at work on March 22, 2000. The respondent admitted claimant sustained a hip injury in the incident but denied claimant sustained a neck injury. The respondent referred claimant for treatment for the hip injury. The hip problems resolved and claimant then sought treatment for his neck pain alleging it was caused by the slip and fall incident. The Administrative Law Judge denied the claimant's request for payment of medical expenses and additional medical treatment for a neck injury. The claimant requests review on the issue of compensability of the neck injury. The respondent contends the Administrative Law Judge's decision should be affirmed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was employed as a cook for the respondent. It is undisputed that on March 22, 2000, the claimant slipped and fell on a wet floor in the kitchen. The claimant

testified that he fell on his hip and hit his head on the floor. A few days later the claimant reported the incident and completed an accident investigation report. In the report the claimant noted he fell, landed on his left hip and his hip was hurt. The report did not contain any mention of neck pain.

The respondent referred the claimant to Augusta Family Practice. On March 31, 2000, the claimant gave a history of a slip and fall landing on his left hip. The claimant complained of left hip pain. X-rays taken of the hip were negative. The claimant returned to his job.

On May 4, 2000, the claimant returned to the Augusta Family Practice with complaints of neck pain which the claimant attributed to the previous fall at work. X-rays of the cervical spine were negative and the report contains a notation that the neck problems were not work-related. On May 18, 2000, the claimant sought treatment at the Wesley Medical Center emergency room. The emergency department report noted that claimant gave a history of injury to his neck and shoulder lifting a patient at the respondent's nursing home. The claimant contends that he never said he was hurt lifting a patient at the nursing home. On May 31, 2000, the claimant returned to the emergency room for treatment for an ear injury. The claimant stated when he had gotten up from a chair at a friend's house his neck hurt so bad that he fell over hitting a table which lacerated his ear.

A preliminary hearing was held on July 18, 2000. The claimant was seeking payment of medical bills and authorization of a physician to provide treatment. The respondent conceded a work-related injury to the hip but denied claimant sustained any neck injury in the slip and fall incident. The Administrative Law Judge ordered an independent medical examination to be performed by Phillip R. Mills, M. D.

On September 18, 2000, Dr. Mills examined the claimant and prepared a report. The doctor was unable to state there was a causal relationship between the claimant's neck complaints and the reported injury. The doctor further opined claimant had reached maximum medical improvement, no further treatment was required, no restrictions were imposed and there was no permanent partial impairment as a result of the slip and fall incident.

The claimant's attorney referred him to Pedro A. Murati, M.D. for an examination on December 4, 2000. Dr. Murati noted he was unable to assess the claimant's muscle strength because the claimant provided no effort and the doctor was unable to complete the examination because the claimant was very hostile and uncooperative. Accordingly, the doctor did not have any recommendations.

The claimant was then referred by his attorney for an examination with Jane Drazek, M.D. on June 7, 2001. Dr. Drazek confirmed claimant did not initially have any cervical complaints after the slip and fall incident. Dr. Drazek concluded claimant's neck complaints

were consistent with his injury and diagnosed chronic cervical pain and hypomobility secondary to trauma. Dr. Drazek recommended claimant be referred for physical therapy and appropriate pharmacologic management. Dr. Drazek suggested claimant avoid heavy lifting greater than 50 pounds and avoid maintaining the head and neck in any one position for a prolonged period of time.

A second preliminary hearing was held on July 31, 2001. The claimant was again seeking payment of medical bills incurred for treatment of the neck as well as authorization of a treating physician. The parties agreed the Administrative Law Judge could refer to the prior preliminary hearing testimony and submitted the matter to the Judge based on counsels' arguments, offered exhibits and without any additional testimony. The Administrative Law Judge adopted Dr. Mills' opinion and denied claimant's request for additional medical treatment and payment of medical expenses for a neck injury.

The claimant initially did not have any complaints of neck pain following the March 22, 2000, slip and fall incident at work. The claimant neither mentioned neck problems on his initial report of the accident nor did he note that he hit his head in the fall. When claimant initially was referred for treatment for his hip on March 31, 2000, he again only gave a history of falling on his hip and did not state that he hit his head. The pain complaints were limited to the hip.

When the claimant sought treatment for his neck pain, cervical x-rays were negative. On September 18, 2000, the court ordered independent medical examiner, Dr. Mills, concluded there was no causal relationship between the neck complaints and the slip and fall incident at work. Moreover, the doctor concluded claimant needed no further treatment, no restrictions and did not have any permanent impairment.

Approximately a year after the injury, the claimant was examined by Dr. Drazek, who concluded the claimant needed additional treatment and the neck injury was consistent with the claimant's history of trauma. However, the court ordered independent medical examination was conducted more contemporaneously with the date of injury and specifically determined, at that time, the claimant needed no treatment. Accordingly, the opinion of Dr. Drazek, after an examination of claimant a year post-injury, is accorded less weight.

Finally, the claimant's credibility is also a significant factor. There are inconsistencies between the reports which contain no mention of claimant hitting his head and claimant's later testimony that he hit his head very hard. Judge Clark was in the unique position to observe the claimant testify at the preliminary hearing and assess his credibility. Based upon Dr. Mills' opinion as well as the inconsistencies noted, the Board affirms the Judge's finding that claimant, at this juncture of the proceedings, has failed to prove that he injured his neck at work as alleged.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated July 31, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2001.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Roger McClellan, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director